THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13494 OF 2005

DATED:13.2.2006

Between:

Mohd Amjad Pasha

…Petitioner

And

The State of Andhra Pradesh

Rep. by its Principal Secretary,

Municipal Administration Department

Secretariat, Hyderabad and others

…Respondents

WRIT PETITION NO.14185 OF 2005

Between:

Surya Kishore

…Petitioner

And

The State of Andhra Pradesh

Rep. by its Principal Secretary,

Municipal Administration Department

Secretariat, Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13494 AND 14185 OF 2005

ORDER:

The petitioners in both the Writ Petitions are tenants of shops/mulgies belonging to Haroon Khan Shervani Wakf situated at Himayatnagar in Hyderabad. It appears, with a view to widen the road, second respondent approached the Muthawalli of the wakf and after obtaining willingness made attempts to forcibly take possession of the land which is likely to be affected by the road widening. The petitioners allege that no notice issued by second respondent to them and unless and until such notice is issued, the action of the Wakf Board cannot be sustained. The petitioners therefore contend that the action of the Municipal Corporation of Hyderabad (MCH) is contrary to the ratio laid down by Full Bench of this Court in **M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad.**

In the counter affidavit filed by respondents 2 and 3 the allegation that impugned action was not preceded by any notice to the tenants is not denied. It is however stated that MCH addressed a letter on 20.6.2005 to Muthawalli, who gave willingness to surrender the vacant portion of the land and therefore MCH took steps for taking possession of the land.

It is now well settled that while action is initiated under Section 146 of the Hyderabad Municipal Corporations Act, 1955 (for short, the Act), it is always open to the Commissioner to enter into a contract with the owner of the land and take possession of the land for public purpose by reason of decision of Full Bench decision this Court in **M/s.Ushodaya Publications case** (supra). Mere consent given by owner of the land would not be sufficient for MCH. The consent of the tenant is also necessary for taking the land after negotiations as per Section 146 of the Act.

I n **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.
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> In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

Therefore, the Writ Petitions are disposed of observing that unless and until the consent of the petitioners tenants is obtained, MCH can neither take possession of the land nor take steps for demolition of the structures. Muthawalli is not competent to give consent. Liberty is given to MCH to approach A.P.Wakf Board in this regard.

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(V.V.S.RAO, J)

13.2.2006

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